

CARROLL BURDICK

Carroll, Burdick & McDonough LLP
44 Montgomery Street
Suite 400
San Francisco, CA
94104-4606

+1.415.989.5900
+1.415.989.0932 Fax
www.cbmlaw.com

September 23, 2014

Gregg McLean Adam
Direct Dial: 415.743.2534
gadam@cbmlaw.com

VIA E-MAIL AND U.S. MAIL

Alex Gurza, Deputy City Manager
City of San Jose
200 E Santa Clara St
San Jose, CA 95113
E-Mail: alex.gurza@sanjoseca.gov

Re: POA Step III Grievance: Retiree Healthcare Contribution Level
File No.: 040278

Dear Alex:

We received Jennifer's letter yesterday. She indicated that the Office of Labor Relations is not willing to undo the unilateral change from 9.51% to 10% in retiree healthcare contributions for POA-represented employees pending our continued negotiations over a successor to Article 50.

It is a needless fight over \$500 per year; yet one that OLR apparently wants.

And it hardly helps the larger concern of collectively trying to address broader retiree healthcare issues. Those will have to take a backseat until the current dispute is resolved.

The POA has tried to resolve this dispute collaboratively over the past few months. In our view, the language of Article 50 is plain and straightforward.

We were particularly surprised to learn that you have not sought an opinion from the City Attorney's Office about its view of the language. As our team heard you say at our meeting on September 2, you had not asked for the City Attorney's input because you were at the table and know what the agreement was (or words to that effect).

So please consider this a Step III grievance. The facts surrounding the grievance are known to you and are summarized in my May 6, 2014 letter to Jennifer, a copy of which is enclosed for your reference. We have also discussed the issue at meetings since May 6.

CBM-SF/SF639084-2

Alex Gurza

Re: POA Step III Grievance: Retiree Healthcare Contribution Level

September 23, 2014

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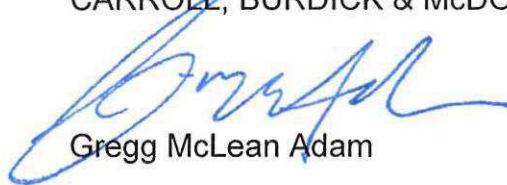
As you know, the City agreed to toll the timeframe for filing a grievance until after Jennifer's response, which we received yesterday, a copy of which is also enclosed.

The POA is filing this grievance in the first instance at Step III because no one at a lower level would have authority to approve the grievance. In fact, since the POA anticipates that you were a party to the decision set forth in Jennifer's letter, we request that you elevate the grievance to arbitration under Step IV unless you have a good faith belief that the Step III process can provide a meaningful effort to resolve the issue. I doubt it will, since the parties simply have a very different reading of the language of their agreement.

Remedy Requested: Reimbursement of all amounts paid by bargaining unit members for retirement healthcare contributions, pursuant to Article 50 of the MOA, in excess of 9.51% and interest thereon.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

Enclosures

cc: Ed Shikada, City Manager
Richard Doyle, City Attorney
Larry Esquivel, Chief of Police
Edgardo Garcia, Assistant Chief of Police
Jennifer Schembri, Deputy Director Employee Relations
Nora Frimann, Assistant City Attorney
Jim Unland, President, San Jose POA
John Robb, Vice President, San Jose POA
Franco Vado, Chief Financial Officer, San Jose POA

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Suite 400
San Francisco, CA
94104-4606

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www.cbmlaw.com

May 6, 2014

Gregg McLean Adam
Direct Dial: 415.743.2534
gadam@cbmlaw.com

VIA EMAIL AND U.S. MAIL

Jennifer Schembri
Deputy Director Employee Relations
City of San Jose
200 E Santa Clara St
San Jose, CA 95113

**Re: Retirement Board Resolution No. 3800 and POA Retiree Healthcare
and Dental Contribution Rates**
File No.: 040278

Dear Jennifer:

I wanted to follow up our phone conversation on Friday and the recent announcement by the Retirement Board of contribution rates for retiree healthcare and dental for active officers. As I mentioned on Friday, and as discussed in greater detail below, the POA is concerned that the City will attempt to unilaterally implement an increase in contribution rates.

The POA's position is that the MOA precludes any further *automatic* increase.

The 2013 Rates

Pursuant to San Jose Police and Fire Retirement Board Resolution No. 3761, effective June 23, 2013, Police members were paying (1) a "Medical Benefit Rate of Contribution" ("the medical rate") of 9.11%, and (2) a "Dental Benefit Rate of Contribution" ("the dental rate") of 0.40% – for a total contribution rate of 9.51%.

The Proposed 2014 Rates

Resolution No. 3800 proposes to increase the medical rate to 9.50% and the dental rate to 0.50% – for an increased total contribution rate of 10%.

Jennifer Schembri

Re: Retirement Board Resolution No. 3800 and POA Retiree Healthcare and Dental Contribution Rates

May 6, 2014

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The MOA Does Not Allow a Further Automatic Rate Increase

"Retiree Healthcare Funding" is governed by Article 50 of the MOA between the City and the POA. Article 50.3 is clear that the agreement to pre-fund the ARC was to be made in "five steps." The first was in June 2009, the fifth was in June 2013. While the total member contribution is capped at 10% under the MOA, the MOA does not itself mandate that a 10% contribution rate be paid automatically. There is no provision for a "sixth step" to increase contribution rates to 10%.

Instead, there is a specific process in Article 50.4 to address the circumstance when the "*calculated* Plan member ... contributions exceed 10% of pensionable pay" and when the City contributions "exceed 11% of pensionable pay." [Underline and italics added.]

I want to confirm your generous agreement to add this topic, at late notice, to those that City and POA representatives will discuss at our previously scheduled meeting on May 15.

The POA intends to resolve this issue collaboratively. However, since the City has wielded grievance timelines so often as a sword, I would be remiss in not seeking to secure from you a commitment to toll any grievance timelines pending that meeting. (While the POA would argue that no grievable action has yet taken place—i.e., the City has not announced *its intention* (as one of the contracting parties) to implement the changes proposed in the Resolution—you can understand my desire to avoid unnecessary procedural disputes as we try to focus on large common problems.

I look forward to: (1) your confirmation of the inclusion of this issue for discussion on the 15th; (2) your agreement to toll grievance timelines; and (3) (assuming (1)) the City's position on the above at our meeting.

Jennifer Schembri

Re: Retirement Board Resolution No. 3800 and POA Retiree Healthcare and Dental
Contribution Rates

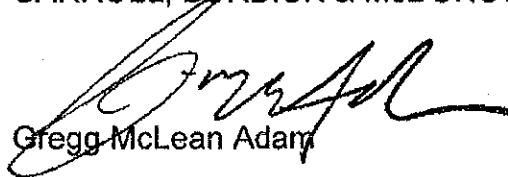
May 6, 2014

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I copy Retirement Board Chair Sean Kaldor and counsel Harvey Leiderman in
order to keep them in the loop.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

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cc. Sean Kaldor, Chair
Harvey Leiderman, Esq., Counsel for P&F Retirement Board
Jim Unland, President, SJPOA
John Robb, Vice President, SJPOA
Franco Vado, Chief Financial Officers, SJPOA

SENT VIA EMAIL

September 22, 2014

Jim Unland
President
San Jose Police Officers' Association (SJPOA)
1151 N. Fourth Street
San Jose, CA 95112

RE: Retiree Healthcare

Dear Jim:

During the meeting on September 2, 2014, the POA requested that the City roll back the current employee retiree healthcare contribution rate from 10% to 9.51%, which was the employee contribution rate effective June 22, 2014. We agree that the cost of funding retiree healthcare is significant for both employees and the City. However, while rolling back the contribution rate would reduce the contributions towards funding retiree healthcare in the short-term, it would increase the cost of the unfunded liability in the long-term unless the decrease in contribution rates was a result of a reduction in the cost of the retiree healthcare benefit.

The City and the POA agreed to phase into making the Annual Required Contribution (ARC) for retiree healthcare so that the benefit would be adequately funded. The increase in the City's and employee's contributions began in 2009, with a cap of a 1.25% increase for employees each year and 1.35% for the City each year, with a maximum contribution of 10% for employees and 11% for the City. We are now at the maximum contribution levels.

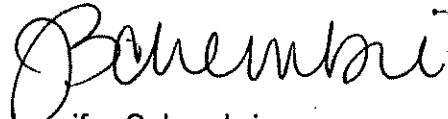
The contract between the City and the POA states that if the maximums are reached, we will meet and confer on how to address any retiree healthcare contributions above 10% for employees and 11% for the City in order to fund the full Annual Required Contribution. The contract states that the discussions shall include alternatives to reduce retiree healthcare costs.

Although the City is not agreeable to rolling back the contribution rates, we are very interested working with the POA to reduce the costs of the retiree healthcare benefit for both employees and the City. We would like to continue to focus on working together in the meet and confer process to address this issue for the long-term, and we would like to set-up regular meetings in which the City and POA can continue to discuss the retiree healthcare benefit for both Tier 1 and Tier 2.

Please see below for the dates and times we are available to meet:

NO	DATE	DAY	TIME
1	September 29, 2014	Monday	2:00 pm
2	October 6, 2014	Monday	2:30 pm
3	October 27, 2014	Monday	2:00 pm

Sincerely,



Jennifer Schembri
Deputy Director of Employee Relations

c: Alex Gurza, Deputy City Manager
Larry Esquivel, Chief of Police
Edgardo Garcia, Assistant Chief of Police
Gregg Adam, SJPOA Counsel
John Robb, POA Vice President
Franco Vado, Chief Financial Officer